HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
…

Case No: CRM(M) No. 198/2025
CrlM No.392/2025
c/w
CRM(M) No. 1129/2025
CrlM No. 2095/2025

Reserved on : 21.10.2026
Pronounced on :05.11.2026
Uploaded on: 06.11.2026

Mohd. Ashraf Beigh c/w
Imran Beigh and another

….Petitioner(s)….

Through: Mr. P.N.Raina, Sr. Advocate with
Ms. Deeksha Handoo, Advocate,
Mr. Sandeep Gupta, Advocate,
Mr. Zulker Nain Sheikh, Advocate.

v/s

UT of J&K and others …..Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG
Mr. Malvika Gupta, Advocate
Mr. Farhan Mirza, Advocate
Mr. Vastav Sharma, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. Through the medium of the present judgment, the afore-titled two petitions under Section 528 of the BNSS,

challenging FIR No. 51/2022 for offences punishable under Sections 379, 419, 420, 465, 467, 468, 471 and 120-B of the IPC, registered with Police Station, Crime Branch, Economic Offences Wing, Jammu, and the charge sheet arising therefrom, are proposed to be disposed of.

2. **CRM(M) No.1129/2025** has been filed by petitioners Imran Beigh and Abid Beigh whereas **CRM(M) No.198/2025** has been filed by petitioner Mohd. Ashraf Beigh. The impugned FIR has been lodged at the behest of respondent-Waseem Wani. It is pertinent to mention here that initially, the petitioners challenged the aforesaid FIR, but during the pendency of these petitions, respondent-Investigating Agency completed investigation of the FIR and filed the challan against the petitioners before the concerned court.

3. As per the prosecution case, a written complaint was lodged by complainant-Waseem Wani with the Investigating Agency. After conducting preliminary verification of the allegations made in the complaint, the impugned FIR came to be registered against the petitioners. A Special Investigating Team (SIT) was constituted, and the investigation of the case was entrusted to an officer of the rank of Deputy Superintendent of Police (Dy. SP). During the course of investigation of the case, the relevant

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documents were seized and the statements of the witnesses were recorded.

4. The facts that came to the fore after the investigation of the case are that, in May 2020, petitioner Imran Beigh, who happens to be the Managing Director of M/s Beigh Construction Company Pvt. Ltd., (for short, "M/s BCC Pvt. Ltd.") approached Ghulam Rasool Wani, father of the complainant, and offered to sublet the railway contract for the construction of an underground railway excavation tunnel (T-77D) using a roadheader at Banihal on certain terms and conditions. The said work was allotted to M/s BCC Pvt. Ltd. by M/s IRCON International Pvt. Ltd. It is alleged that M/s IRCON International Pvt. Ltd. had not authorized M/s BCC Pvt. Ltd. to sublet the said contract without obtaining prior written consent from the principal. However, despite this condition, petitioner Imran Beigh issued a work order in the name of Ghulam Rasool Wani for the execution of the said project on 20.08.2020. An agreement dated 20.12.2020 was executed between Ghulam Rasool Wani and petitioner Imran Beigh, with retrospective effect from 27.09.2020, for execution of the project. In terms of the said agreement, a bank guarantee for an amount of rupees one crore was obtained by petitioner Imran Beigh

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from Ghulam Rasool Wani. In this regard, the amount was transferred from the account of Ghulam Rasool Wani to the account of M/s BCC Pvt. Ltd., and a certain portion of the bank guarantee amount was paid in cash.

5. It is further case of the prosecution that execution of the work allotted commenced on 27.09.2020 and continued up to 05.03.2021, during which period, Ghulam Rasool Wani executed works amounting to Rs. 3.78 crores, and the bills were submitted to M/s IRCON International Pvt. Ltd. through Project Manager of M/s BCC Pvt. Ltd. However, the entire amount of the bills released by M/s IRCON International Pvt. Ltd. against the work executed was credited to the account of M/s BCC Pvt. Ltd. instead of the designated ESCROW account opened with HDFC Bank, Narwal Branch. It is alleged that petitioner Imran Beigh deliberately withheld the due share of 76% of the released amount, which was to be paid to Ghulam Rasool Wani in terms of the agreement.

6. On 13.03.2021, petitioner Imran Beigh issued a termination order of the contract against Ghulam Rasool Wani without prior notice or intimation and without clearing the outstanding liability, with the intention to evade his financial responsibility. After the termination of the contract, the

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petitioner, with a premeditated intention to cheat, approached the complainant with a new proposal under which he assured the complainant that 70% of the bank guarantee amount (Rs. 70.00 lakhs) would be repaid, and in lieu of the remaining 30%, Ghulam Rasool Wani would be granted 30% partnership in the ongoing project. On the basis of these assurances, Ghulam Rasool Wani again engaged himself in the execution of the project and invested an amount of Rs. 31.00 lakhs. A bill exceeding Rs. one crore was submitted to M/s IRCON International Pvt. Ltd., and the payment was credited to the account of petitioner Imran Beigh without releasing the share of Ghulam Rasool Wani. However, the accused persons released only 57.50% of the bank guarantee amount while withholding the remaining amount.

7. It is further alleged that Ghulam Rasool Wani opted out of the contract and demanded the outstanding dues from the accused persons. However, the petitioners again approached the complainant with yet another proposal and executed an agreement dated 16.10.2021 on behalf of M/s BCC Pvt. Ltd. This agreement was executed by petitioner Ashraf Beigh, who had no authority to execute the said agreement on behalf of the company, and as such, the said agreement is a

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fabricated document. By virtue of the said agreement, M/s BCC Pvt. Ltd. agreed to pay Rs. 42.00 lakhs either directly to Ghulam Rasool Wani or to the vendors from whom he had procured the material/equipment on credit for execution of the work. This agreement was executed by the petitioners deliberately with the intention of deceitfully taking possession of the machinery earlier provided by M/s BCC Pvt. Ltd., which was in the custody of Ghulam Rasool Wani for execution of the project. Despite execution of the agreement, the petitioners obtained an interim injunction dated 18.10.2021 from the Court of the Sub-Judge, Ramban, and, on the strength of the said interim injunction, unlawfully removed and misappropriated material and equipment worth lakhs of rupees, which had been procured by Ghulam Rasool Wani for execution of the project.

8. It has been alleged that during the course of investigation, M/s BCC Pvt. Ltd. produced falsified records claiming that Ghulam Rasool Wani was liable to pay an amount of Rs. 1.24 crores to M/s BCC Pvt. Ltd. However, on 05.05.2022, the company admitted its liability and expressed its willingness to pay Rs. 1.10 crores to Ghulam Rasool Wani. As per the Investigating Agency, the records submitted by

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the accused reveal that the actual liability was approximately Rs. 82 lakhs in favour of Ghulam Rasool Wani.

9. It has been submitted that during the course of investigation, petitioners Imran Beigh and Ashraf Beig approached the complainant and executed two settlement agreements dated 17.09.2022 in favour of Ghulam Rasool Wani. As per these settlement agreements, petitioner Imran Beigh agreed to pay Rs. 1.50 crores out of the total liability of Rs. 2.25 crores to the complainant in instalments within four months. With respect to the remaining amount, he undertook to settle the same within 15 days through mutual understanding, pending finalization of the liability. Petitioner Imran Beigh also agreed to hand over possession of the house falling under Khasra No. 225, situated at Bhatindi, Jammu, to the complainant. The said property stands in the name of petitioner Mohd. Ashraf Beig, who is the father of Imran Beigh, with whom a separate agreement dated 17.09.2020 was executed.

10. It is further stated in the charge sheet that on 18.09.2020, possession of the aforesaid house was handed over to the complainant and a written document evidencing the handing over and taking over was prepared. It was agreed by petitioners Imran Beig and Ashraf Beig that the complainant

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would be at liberty to alienate the said house if they failed to discharge their liability. The accused persons issued cheques amounting to Rs. 1.50 crores in favour of the complainant. However, only Rs. 50 lakhs were realized, whereas cheques amounting to Rs. one crore were dishonoured. It has been stated that both petitioners Imran Beigh and Ashraf Beig agreed to resolve the remaining dispute within 15 days, as stipulated, but they adopted dilatory tactics under one pretext or another.

11. According to the prosecution, all the settlement agreements dated 05.05.2022, 17.09.2022 and 16.10.2021 between the complainant and the accused were, in fact, further acts of cheating committed by the accused persons with the intention to deprive the complainant of his hard-earned money. It has been submitted that the conduct of the accused persons in repeatedly entering into compromises with the complainant party without fulfilling their promises clearly reflects their criminal intent. Thus, according to the prosecution, offences under Sections 379, 419, 420, 465, 467, 468, 471 and 120-B of the IPC are fully established against all these petitioners.

12. The petitioners have challenged the impugned FIR and the proceedings emanating therefrom on the ground that the

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same are an abuse of the process of law, as the complainant has converted a purely civil dispute into a criminal case. It has been contended that, on a plain reading of the allegations made in the FIR, it becomes clear that the dispute between the parties is purely commercial in nature which has arisen on account of the substandard execution of work by the complainant party. According to the petitioners, the omission on the part of the complainant to adhere to the terms of the sub-contract ultimately led to the termination of said contract. It has been contended that one of the sons of Ghulam Rasool Wani, who happens to be the brother of the complainant, is posted as an Inspector in the Crime Branch, Jammu, and that, at his behest, the impugned FIR has been lodged in order to pressurize the petitioners to enter into a settlement favourable to the complainant. It has been submitted that the petitioners have also filed a civil suit for permanent prohibitory injunction in respect of the house situated at Bhatindi against respondent No. 2, which is pending disposal before the Court.

13. The respondent-complainant, in his reply to the petition, has reiterated the allegations made in the charge sheet against the petitioners. It has been submitted that the petitioners are habitual offenders and have a criminal background.

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According to the private respondents, petitioner Imran Beigh was found involved in FIR No. 196/2009, registered at Police Station, Banihal, for offences under Sections 452/354/148/302 RPC. Another FIR bearing No. 21/2021, for offences under Sections 420, 467, 468, 471 and 120-B RPC, is registered at Police Station, Crime Branch, Jammu, against petitioner Imran Beigh. Yet another FIR bearing, No. 168/2019, for offences under Sections 406, 420, 468, 471 and 120-B IPC, is registered against the petitioner at Police Station, Economic Offences Wing, Delhi. It has been submitted that FIR No. 181/2024, for offences under Sections 288 and 125 of the BNS, stands registered against petitioner Imran Beigh at Police Station, Banihal. Thus, the private respondents have contended that the petitioners are repeat offenders.

14. On merits, the private respondents have reiterated and reaffirmed the allegations made in the charge sheet against the petitioners and have contended that the offences alleged are clearly made out against the petitioners. It has been contended that merely because the genesis of the dispute between the parties is a commercial transaction, the proceedings cannot be quashed once, upon investigation of

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the case, it has come to the fore that the petitioners are involved in the commission of criminal offences.

15. I have heard learned counsel for the parties and perused record of the case, including the charge sheet.

16. At the very outset, a preliminary objection regarding maintainability of the instant petitions has been raised by learned counsel appearing for the respondents on the ground that once the charge sheet stands filed against the petitioners after investigation into the impugned FIR, the petitions are rendered infructuous. It has been contended that, if the petitioners have any case, they are at liberty to raise the contentions that are being urged in the petitions before the trial court at the time of framing of charges.

17. In the above context, it is to be noted that the law is well settled that even if charge sheet has been filed during the pendency of a petition under Section 528 of the BNSS, the Court is still vested with the power to examine whether the offences alleged to have been committed by the accused persons are prima facie made out from the complainant's FIR, charge sheet, documents, etc. There is nothing in Section 528 of the BNSS that restricts the exercise of the Court's power to prevent abuse of the process of the Court or miscarriage of justice only to the stage of the FIR. Reference

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in this regard is being made to the ratio laid down by the Supreme Court in the case of **Anand Kumar Mohatta and Another v. State (Govt. of NCT of Delhi), (2019) 11 SCC 706**.

18. That takes us to merits of the case. The main contention raised by the petitioners for challenging the impugned FIR and charge sheet is that the allegations made in the charge sheet owe their origin to a commercial dispute that has arisen between the petitioners and the complainant and that there is no element of criminality attached to the underlying dispute.

19. It is a settled law that merely because the underlying dispute between the complainant and the accused pertains to a commercial transaction would not, by itself, be a ground to quash the criminal proceedings. It is true that a commercial transaction, apart from giving rise to a cause of action for seeking a remedy under civil law, may also involve a criminal offence. Legal position in this regard has been enunciated by the Supreme Court in the case of **M/s Indian Oil Corporation v. NEPC India Ltd. and Others, (2006) 6 SCC 736**. The Supreme Court, in the said case, after considering its earlier precedents, summarized the principles relating to the exercise of jurisdiction under Section 482

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Cr.P.C. to quash complaints and criminal proceedings in the following manner:-

> *"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre, State of Haryana vs. Bhajanlal , Rupan Deol Bajaj vs. Kanwar Pal Singh Gill Vs., Central Bureau of Investigation v. Duncans Agro Industries Ltd., , State of Bihar vs. Rajendra Agrawalla , Rajesh Bajaj v. State NCT of Delhi, , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. , Hridaya Ranjan Prasad Verma v. State of Bihar M. Krishnan vs Vijay Kumar [2001 , and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque.. The principles, relevant to our purpose are :*
>
> *(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.*
>
> *For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.*
>
> *(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.*
>
> *(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The*

power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

20. From the foregoing analysis of the legal position, it is clear that the scope of civil proceedings is different from that of criminal proceedings, and merely because the allegations made in the complaint or the charge sheet relate to a commercial transaction or breach of trust, for which a civil remedy is available, the criminal proceedings cannot be quashed. The Court has to ascertain whether the allegations made in the FIR/charge sheet disclose the commission of a criminal offence and if no such offence (s) is disclosed the

court would be well within its jurisdiction to quash the proceedings.

21. With the afore-stated legal position in mind, let us now advert to the facts of the present case. In the instant case, the Investigating Agency, after conducting the investigation, has found that offences under Sections 379, 419, 420, 465, 467, 468, 471 and 120-B of the IPC are established against the petitioners.

22. The offence under Section 379 of IPC has been invoked by the Investigating Agency on the basis of the allegations that the accused persons, in collusion with the employees of M/s BCC Pvt. Ltd., unlawfully removed and misappropriated the material and equipment worth lakhs of rupees that were lying at the site and had been procured by Ghulam Rasool Wani for the execution of the said project.

23. In the above context, if we have a look at the initial agreement executed between petitioner Imran Beigh and Ghulam Rasool Wani, whereby the work of execution of the underground railway excavation tunnel (T-77D) was subcontracted to Ghulam Rasool Wani with effect from 27.09.2020, it is revealed that M/s BCC Pvt. Ltd. was responsible for providing the machinery then available at the site for the execution of the work without any rental charges

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to Ghulam Rasool Wani. It has come to the fore from the documents placed on record along with the charge sheet, as well as by the private respondents along with their reply, that a judicial order came to be passed by the learned Sub-Judge, Ramban, on 18.10.2021, whereby Ghulam Rasool Wani and his son Waseem Wani were restrained from causing any interference with the execution of the work in question by M/s BCC Pvt. Ltd. There is another judicial order passed by the learned Munsiff, Banihal, on 01.02.2022, in a suit filed by Ghulam Rasool Wani against petitioner Imran Beigh, whereby the defendant was restrained from forcibly taking the machinery provided to the plaintiff therein by the defendant without following due process of law.

24. From these documents, it appears that the machinery and equipment that were available at the site belonged to M/s BCC Pvt. Ltd. If the petitioners have removed the said machinery and equipment from the spot, that would amount to violation of order dated 01.02.2022 passed by the learned Munsiff, Banihal, but it cannot take the shape of an offence of theft. Since, as per the terms of the agreement executed between the parties and as per complainant party's own showing in the suit filed before the learned Munsiff,

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Banihal, the machinery and equipment belonged to M/s BCC Pvt. Ltd., which intended to remove the same, it cannot be stated that an offence of theft has been committed by M/s BCC Pvt. Ltd. or its functionaries, including the petitioners. A person cannot be prosecuted for having committed theft of his own property. As per the terms of the agreement, the complainant party had no right of lien over the machinery and equipment, which is apparent from the initial agreement executed between the parties. Even if there was violation of any terms of the agreement on the part of M/s BCC Pvt. Ltd. in removing the machinery and equipment from the site, it cannot constitute an offence of theft.

25. That takes us to the offence of impersonation, which, as per the Investigating Agency, has been established against the petitioners. The allegation of impersonation is based upon the finding of the Investigating Agency that petitioner Mohd. Ashraf Beigh, while executing agreement dated 16.10.2021, represented that he was authorized by M/s BCC Pvt. Ltd. to execute the said agreement, though it turned out that he was not holding any authority on behalf of M/s BCC Pvt. Ltd. Therefore, he resorted to impersonation.

26. In the above context, the provision contained in Section 416 of the IPC which defines the offence of cheating by

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personation is required to be noticed. The same is reproduced as under:-

> ***"416. Cheating by personation.—***
>
> *A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is."*

27. From a perusal of the aforesaid provision, it is clear that if a person pretends to be some other person or knowingly substitutes one person for another, such person is said to have cheated by impersonation.

28. In the present case, petitioner Mohd. Ashraf Beigh has simply represented M/s BCC Pvt. Ltd., while executing agreement with the complainant. It is clearly mentioned in the agreement that he has done so as father of petitioner Imran Beigh, Managing Director of M/s BCC Pvt. Ltd. It is nowhere represented in the agreement that petitioner Mohd. Ashraf Beigh was holding any authority, written or otherwise, on behalf of M/s BCC Pvt. Ltd. Thus, no false representation or misrepresentation was made by Mohd. Ashraf Beigh at the time of execution of the said agreement. The covenants of the agreement are very clear to the effect that Mohd. Ashraf Beigh was simply representing M/s BCC Pvt. Ltd., of which

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his son, Imran Beigh, is the Managing Director. The ingredients of the offence under Section 419 of the IPC are, therefore, not attracted to the facts of the present case.

29. There is another curious fact that needs to be noticed. The aforesaid agreement has been executed by complainant Waseem Wani on behalf of his father, Ghulam Rasool Wani. Learned counsel for the private respondents has submitted that Waseem Wani was holding a special power of attorney on behalf of his father. However, a perusal of the record would show that the said special power of attorney was executed by Ghulam Rasool Wani in favour of his son, Waseem Wani, on 17.09.2022, whereas the agreement was executed by him on 16.10.2021, meaning thereby that he was not holding any written authority from his father to execute the said agreement. If the logic projected by the Investigating Agency in implicating petitioner Mohd. Ashraf Beigh in the offence under Section 419 of the IPC is accepted, then respondent Waseem Wani is equally liable.

30. The other offence invoked against the petitioners is one under Section 420 of IPC. The allegations regarding cheating are based upon the findings of the Investigating Agency that, right from the inception, the petitioners intended to defraud respondent Ghulam Rasool Wani. In the

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first instance, it is alleged that M/s IRCON International Pvt. Ltd. had not authorized M/s BCC Pvt. Ltd. to execute the subcontract and in violation of the said stipulation, they entered into a subcontract with Ghulam Rasool Wani. The second contention is that respondent Ghulam Rasool Wani was made to furnish a bank guarantee for Rs. one crore with a view to cheat him. It has also been alleged that, as per the initial agreement executed between M/s BCC Pvt. Ltd. and Ghulam Rasool Wani, an ESCROW account was to be opened and all payments were to be routed through the said account so that Ghulam Rasool Wani would receive his share of 76% of the bill amount in terms of the initial agreement executed between the parties. However, despite the opening of the ESCROW account, the bills were directly credited to the account of M/s BCC Pvt. Ltd. Another instance of cheating relied upon by the Investigating Agency is the execution of subsequent agreements by the petitioners with the complainant party without adhering to the terms and conditions of the said agreements.

31. Before ascertaining whether the aforesaid allegations constitute the offence of cheating, it would be necessary to understand as to what are the ingredients of offence of

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cheating. Section 415 of the IPC defines the offence of cheating. It reads as under:-

> ***"415. Cheating.—***
>
> *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat."*

32. The Supreme Court in the case of **R.K.Vijayasarathy and another Vs. Sudha Setharam and another, 2019(16) SCC 739** has after noticing the aforesaid provision, held that the ingredients of an offence of cheating are as follows:-

> *"16.1. There should be fraudulent or dishonest inducement of a person by deceiving him;*
>
> *16.1.1. The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or*
>
> *16.1.2. The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and*
>
> *16.2. In cases covered by 16.1.2. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.*
>
> *17. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who*

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dishonestly induces another person to deliver any property is liable for the offence of cheating.

18. Section 420 of the Penal Code reads thus:

> *"420. Cheating and dishonestly inducing delivery of property.—*
>
> *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

19. The ingredients to constitute an offence under Section 420 are as follows:

19.1. A person must commit the offence of cheating under Section 415; and

19.2. The person cheated must be dishonestly induced to

> *(a) deliver property to any person; or*
>
> *(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.*

20. Cheating is an essential ingredient for an act to constitute an offence under Section 420."

33. Again the Supreme Court in the case of **A.M.Mohan Vs. State represented by SHO and another, 2024(12) SCC 181** after noticing the provisions of Sections 415 and 420 of IPC explained the offence of cheating in the following manner:-

> *"22. It could thus be seen that for attracting the provision of Section 420 of IPC, the FIR/complaint must show that the ingredients of Section 415 of IPC are made out and the person cheated must have been dishonestly induced to deliver the property to any person; or to make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. In other words, for attracting the provisions of Section 420 of IPC, it must be shown that the FIR/complaint discloses:*
>
> *(i) the deception of any person;*
>
> *(ii) fraudulently or dishonestly inducing that person to deliver any property to any person; and*
>
> *(iii) dishonest intention of the accused at the time of making the inducement."*

34. It is to be noted that dishonest intention on the part of the accused must exist from the very inception of the transaction. Merely because the accused has failed to adhere to the terms of a contract, when there was no dishonest or fraudulent intention at the inception of the transaction, would not constitute an offence of cheating.

35. With the aforesaid legal position in mind, let us now consider whether the afore-noted allegations constitute the offence of cheating. The first allegation, as noted above, is that the agreement executed between M/s IRCON International Pvt. Ltd. and M/s BCC Pvt. Ltd. did not provide for subletting of the contract, but M/s BCC Pvt. Ltd. still entered into a subcontract with the private respondents;

therefore, the offence of cheating is made out against the petitioners. In this regard, it is to be noted that, as per the material collected by the Investigating Agency, there was no covenant in the agreement executed between petitioner Imran Beigh and M/s IRCON International Pvt. Ltd. authorizing him to sublet the contract without obtaining prior written permission. It is mentioned in the charge sheet that violation of the said condition gave M/s IRCON International Pvt. Ltd. the right to terminate the contract with M/s BCC Pvt. Ltd.

36. Whatever the terms and conditions of the contract between M/s IRCON International Pvt. Ltd. and M/s BCC Pvt. Ltd. were there, the same do not have any bearing upon the terms of the contract between M/s BCC Pvt. Ltd. and Ghulam Rasool Wani in the facts and circumstances of the instant case. Had it been a case where subcontractor Ghulam Rasool Wani would have suffered loss on account of the termination of the contract of M/s BCC Pvt. Ltd. by M/s IRCON International Pvt. Ltd. on the ground of subletting of the contract by M/s BCC Pvt. Ltd., perhaps it could have been said that the petitioners had defrauded the subcontractor. However, in this case, the material on record shows that even after the termination of the subcontract of Ghulam

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Rasool Wani, M/s BCC Pvt. Ltd. continued to execute the works under the subsisting contract with M/s IRCON International Ltd. This shows that the lack of authority of M/s BCC Pvt. Ltd. to enter into a subcontract did not have any effect on the transaction between M/s BCC Pvt. Ltd. and Ghulam Rasool Wani.

37. If at all M/s BCC Pvt. Ltd. violated any terms of contract with M/s IRCON International Ltd, the same would not give rise to a cause of action in favour of the complainant unless it is shown that he has suffered any loss on account of violation of the terms of the principal contract by M/s BCC Pvt. Ltd. A violation of terms of principal contract would give a right to M/S IRCON International Ltd to terminate the contract with M/S BCC Ltd. The same would not offer a cause of action to the complainant to proceed against M/S BCC Ltd. In the present case, there is no material on record to show that sub-contract between the parties has been affected by the relationship between M/s IRCON International Ltd. and M/s BCC Pvt. Ltd. In these circumstances the violation of terms of principal contract by M/S BCC Ltd would not give rise to offence of cheating qua the complainant.

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38. The second allegation pertains to the opening of an ESCROW account. Although it appears from the material collected by the Investigating Agency that an ESCROW account was opened, yet it seems that the bills were not credited through the ESCROW account and instead the same were being directly credited to the account of M/s BCC Pvt. Ltd.

39. In the above context, if we have a look at the terms of the agreement executed between the parties at the time of subletting of the contract, it is recorded that M/s BCC Pvt. Ltd. was obliged to make an endeavour to open an ESCROW account, from which the proceeds were to be distributed between the two parties in accordance with Clause (v) of the agreement. The expression used in the agreement is "endeavour", which means that an effort was to be made by M/s BCC Pvt. Ltd. to open an ESCROW account, but there was no binding obligation upon M/s BCC Pvt. Ltd. to open an ESCROW account and route the bills through the said account. Merely because the payments were not routed through the ESCROW account, it cannot be stated that the petitioners resorted to cheating, particularly when there is material on record to show that, after the bills were released and credited to the account of M/s BCC Pvt. Ltd., a

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substantial amount was released in favour of Ghulam Rasool Wani.

40. In this regard, it is to be noted that the Investigating Agency has found that an amount of Rs. 60 lakhs was paid to Ghulam Rasool Wani against the first running account bill dated 10.12.2020, though his actual share was Rs. 1,12,18,476/-. It has also been found that, against the second bill dated 22.02.2021, a payment of Rs. 80 lakhs was made in favour of Ghulam Rasool Wani in May 2021, leaving a balance amount of Rs. 81,51,322/-. There is material on record to show that, pursuant to the subsequent agreement, M/s BCC Pvt. Ltd. returned 57% of the bank guarantee amount, though it had undertaken to return 70% of the bank guarantee amount. There is also material on record to show that, in terms of the subsequent agreement, petitioners Imran Beigh and Ashraf Beig handed over possession of their house at Bathindi to the complainant as a guarantee for repayment of the balance amount.

41. From the aforesaid established facts on record, it is discernible that the petitioners had no fraudulent intention to cheat the complainant party at the inception of the transaction. It is improbable that a person intending to cheat would pay more than Rs.1.50 crores and hand over

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possession of his house situated in a prime location in Jammu as guarantee for repayment of outstanding amount to the person intended to be cheated. The fact that the petitioners, during the course of the transaction with the complainant, made substantial payments and even furnished security for payment of the balance amount by handing over possession of their house shows that there was no intention on their part to deceive the complainant party. It appears that it was only because of subsequent disputes that arose between the parties that the balance payments were withheld and the contract was terminated. Thus, the offence of cheating is not made out against the petitioners.

42. Another allegation established during the investigation of the case is that the complainant Ghulam Rasool Wani was compelled to furnish a bank guarantee of Rs. one crore. In this regard, it is to be noted that one of the terms of the initial agreement executed between the parties was that the subcontractor would furnish a bank guarantee of Rs. one crore. It was in pursuance of the said term of the agreement that Ghulam Rasool Wani furnished the requisite bank guarantee. It is not the case of the complainant that the initial agreement was executed by Ghulam Rasool Wani under any coercion or undue influence; therefore, it is not open to the

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complainant to allege that he was forced to furnish the bank guarantee.

43. The fact that the petitioners have entered into repeated settlements with the complainant party shows that they intended to settle the dispute, which appears to be purely commercial in nature. Merely because they could not adhere to the terms of the settlement, even though, under the terms of the settlement, they did release 57% of the amount of the bank guarantee, it cannot be stated that the petitioners have resorted to cheating.

44. That takes us to the allegations with regard to the offence of forgery. The investigating agency has invoked the offence of forgery on the basis of the allegation that the petitioner Mohd. Ashraf Beigh was not authorised to execute the agreement dated 16.10.2021; therefore, it is a forged document.

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45. The essential ingredient of forgery under Section 463 of the IPC is the making of a false document within the meaning of Section 464 of the IPC. As per Section 464 IPC, a person is said to make a false document if he dishonestly or fraudulently makes, signs, seals or executes a document or part of a document or if he makes any mark denoting the execution of a document with the intention of causing it to

be believed that such document or part of a document was made, signed, sealed and executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed. A false document can also be said to have been made if a person, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof after it has been made or executed either by himself or by any other person. Again, when a person is made to sign, seal, execute or alter a document dishonestly or fraudulently, knowing that such person, by reason of unsoundness of mind or intoxication, cannot, or by reason of deception practised upon him, does not know the contents of the document or the nature of the alteration, a false document can be said to have been made.

46. The Supreme Court in the case of **Mohd Ibrahim Vs. State of Bihar, 2009 (8) SCC 751** has held that when a person executes a document claiming property as his own , there is no making of a false document merely because the claim is ultimately found to be incorrect. The relevant para reads as under:-

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"12. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of `false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of `false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then

neither section 467 nor section 471 of the Code are attracted.

47. From the aforesaid analysis of the legal position, it is clear that when a person executes a document in his own capacity and does not claim that he is authorized by someone else, it cannot be stated that he has made a false document.

48. Turning to the facts of the case, the petitioner Ashraf Beigh, while executing agreement dated 16.10.2021, has not executed it by claiming that he is someone else or that he has been authorised by some other person to execute the said document without actually holding any such authority. It is clearly stated in the agreement that he is representing M/s BCC Pvt. Ltd., being the father of its Managing Director, petitioner Imran Beigh. Therefore, the document in question cannot be termed as forged. Thus, the investigating agency has grossly erred in invoking the offences defined under Sections 465, 467, 468 and 471 of the IPC.

49. From what has been discussed hereinbefore, it is clear that the subject matter of the dispute between the petitioners and the complainant party is purely commercial in nature. While the complainant party claims that their contract has been wrongly terminated and their payment has been withheld, the petitioners claim that the complainant party has not

executed the works in accordance with the terms of the contract. In fact, the private respondents, along with their reply, have placed on record copies of various communications issued by M/s BCC Pvt. Ltd. to Ghulam Rasool Wani, voicing its concern about material breaches of the work order. By virtue of these communications, respondent Ghulam Rasool Wani has been called upon to take curative steps and he has been threatened with termination of the contract. In these communications, it has been highlighted that the complainant has not shown any progress in the work and that the work executed by the subcontractor is of substandard quality. Particulars of these aspects have been detailed by M/s BCC Pvt. Ltd. in its communications addressed to Ghulam Rasool Wani, who, in turn, has submitted his responses to all these communications, highlighting the fact that the entire amount due to him had not been paid thereby justifying his actions.

50. On the basis of aforesaid admitted facts, it is clear that the dispute between the complainant and the petitioners is purely commercial in nature, having no element of criminality attached to it. The dispute to be determined is as to which of the parties is at fault. The determination of the said dispute would give rise to monetary claims against the

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defaulting party. A criminal investigation cannot be resorted to for determination of such dispute. However, the investigating agency, it seems, has converted this purely commercial dispute into a criminal case by assuming the role of a recovery agent on behalf of the complainant. In fact, a bare perusal of the contents of the charge sheet would reveal that it appears be claim petition on behalf of the complainant in the guise of a charge sheet.

51. The Supreme Court has time and again deprecated the tendency of litigants to convert a purely commercial or civil dispute into a criminal prosecution. **In Indian Oil Corporation's case** (supra), the Supreme Court has noted with concern the growing tendency in business circles to convert purely civil disputes into criminal cases. The Court has observed that it is on account of the prevalent impression that civil law remedies are time-consuming and do not adequately protect the interests of lenders/creditors that people are resorting to criminal proceedings, as there is a likelihood of an imminent settlement. The Court further held that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution, should be deprecated and discouraged. The said legal position has been reiterated and

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reaffirmed by the Supreme Court in the cases of **Bhikhubhai Govindbhai Patel and another Vs. State of Gujarat and another, 2026 LiveLaw (SC) 593, and A.M. Mohan Vs. State, 2024 (12) SCC 181**.

52. For what has been discussed hereinbefore, it is clear that the respondents have given a criminal colour to a purely commercial dispute between them and the petitioners. Therefore, the continuance of criminal proceedings against the petitioners would amount to an abuse of the process of law. Thus it is a fit case where this Court should exercise its inherent powers under Section 528 of the BNSS to prevent the abuse of the process of law and to secure the ends of justice.

53. Accordingly, the petitions are allowed, and the impugned FIR No. 0051/2022 dated 23.08.2022, including the charge sheet arising therefrom, is quashed.

(Sanjay Dhar)
Judge

Jammu
05.11.2026
Madan Verma-Secy

Whether order is speaking? Yes/No
Whether order is reportable? Yes/No